

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

In re HAIN CELESTIAL HEAVY METALS
BABY FOOD LITIGATION

This Document Relates to: All Actions

This Document also Relates to:

LORI-ANNE ALBANO, MYJORIE PHILIPPE,
REBECCA TELARO, and ALYSSA ROSE, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

HAIN CELESTIAL GROUP, INC., BEECH-NUT
NUTRITION COMPANY, GERBER PRODUCTS
COMPANY, and NURTURE, INC.,

Defendants.

Case No.: 2:21-CV-0678-JS-AYS

Case No.: 2:21-cv-01118-JS-AYS

**DECLARATION OF ROSEMARY M. RIVAS
IN SUPPORT OF ALBANO PLAINTIFFS'
MOTION FOR APPOINTMENT OF COHEN
MILSTEIN SELLERS & TOLL PLLC AND
GIBBS LAW GROUP LLP AS INTERIM
COUNSEL**

I, Rosemary M. Rivas, declare as follows:

1. I am a partner with Gibbs Law Group LLP, counsel of record for Plaintiffs Lori-Anne Albano, Myjorie Philippe, Rebecca Telaro, and Alyssa Rose in the action entitled *Albano, et al. v. Hain*

Celestial Group, Inc., et al., Case No. 2:21-cv-01118-JS-AYS (“Albano Action”). I make this declaration in support of the Albano Plaintiffs’ Motion for Appointment of Cohen Milstein Sellers & Toll PLLC and Gibbs Law Group LLP as Interim Counsel. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. On May 13, 2021, the Court issued an order that set a deadline of May 27, 2021 for the filing of motions for the appointment of interim counsel pursuant to Federal Rule of Civil Procedure 23(g). While the Albano Action was not consolidated as part of the consolidated proceedings titled, *In re Hain Celestial Heavy Metals Baby Food Litigation*, Case No. 21-CV-0678 (“*In re Hain Celestial*”), in the Court’s May 13, 2021 order, the Court stated that its decision was without prejudice and that a motion to consolidate the Albano Action with *In re Hain Celestial* could be renewed upon reassignment to the Court.

3. On May 20, 2021, the Albano Action was re-assigned to the Court for all further proceedings.

4. On behalf of Gibbs Law Group and the firm’s clients, I will have primary responsibility for the case. I have dedicated my legal career to representing consumers and have a significant amount of experience and knowledge in litigating complex, class action cases involving food mislabeling cases, defective products and consumer fraud. Based on my experience and leadership skills, I have received a number of judicial appointments to leadership positions in multidistrict litigation proceedings and other class action cases in state and federal courts around the country that have settled for hundreds of millions of dollars.

5. In a highly competitive process involving 150 applicants, I was one of 22 lawyers selected by the Honorable Charles R. Breyer to serve on the Plaintiffs’ Steering Committee in *In Re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litig.*, MDL No. 2672 (N.D. Cal.), which settled for over \$14.7 billion dollars —the largest in the history of auto class actions.

The Recorder, a San Francisco legal newspaper, named the lawyers selected by Judge Breyer as a class action “dream team.”

6. I was also part of the team in the national class action titled *Rodriguez v. West Publishing Corp.*, No. 05-3222 (C.D. Cal.), which settled for \$49 million based on allegations of unlawful monopolization in the bar review market.

7. Recently, I was part of the executive committee in the action titled, *In Re: Apple Inc. Device Performance Litig.*, Case No. 5:18-md-02827 (N.D. Cal.), which settled for \$310 million on behalf of consumers nationwide whose iPhones were allegedly intentionally slowed down by Apple.

8. I also have significant experience litigating food labeling cases. I served as Co-Lead Class Counsel in the action titled, *Pappas v. Naked Juice*, No. 2:11-cv-08276 (C.D. Cal.), which involved allegations that Naked Juice was falsely advertised as “all natural” and containing “No GMOs.” In that case, I was instrumental in achieving a nationwide class action settlement consisting of a \$9 million cash fund and changes to the company’s testing procedures and product labels.

9. In *In Re: Hill’s Pet Nutrition, Inc., Dog Food Products Liability, Litig.*, MDL No. 2887 (D. Kan.), which involved claims that Hill’s dog food had excessive Vitamin D that was harmful to pets, I was appointed to the executive committee by Chief Judge Julie A. Robinson, where a proposed nationwide class action settlement of \$12.5 million is currently pending.

10. In *Lilly v. ConAgra Foods, Inc.*, 743 F.3d 662 (9th Cir. 2014), I obtained a reversal of the district court’s order below finding that the plaintiff’s claims that the defendant failed to disclose the full amount of sodium in its food products were preempted by FDA regulations. Thereafter, ConAgra Foods agreed to change its labeling of David Sunflower Seeds as part of a class action settlement.

11. Other class cases I have prosecuted include: *Lima v. Gateway*, No. 8:09-cv-01366-DMG-AJWNo (C.D. Cal.) (Co-Lead Class Counsel in nationwide class action involving defective monitor; achieved \$195 refund for each monitor purchased) and *Garcia v. Allergan, Inc.*, No. 09-cv-7088 PSG

(C.D. Cal.) (Co-Lead Class Counsel; achieved \$7.75 million settlement and changes to the company's training procedures in class action alleging Allergan engaged in off-label advertising).

12. For my work on behalf of consumers, I received a California Lawyer of the Year ("CLAY") Award, which is given annually to outstanding California practitioners "whose extraordinary work and cases had a major impact on the law."

13. I have also been repeatedly recognized as a Super Lawyer by Law & Politics Magazine, which recognizes the top lawyers in specific areas, including Class Actions & Mass Torts.

14. Additionally, I was presented with the Guardian of Justice award by Bay Area Legal Aid for my work achievements in the law and my role in helping to ensure equal access to the civil justice system.

15. Based on my experience, I routinely speak on matters relating to consumer protection and class action procedure. Attached hereto as **Exhibit A** is a true and correct copy of my firm's resume, which includes my biography and the biographies of others within my firm who will work on the litigation.

16. I am dedicated to protecting consumer rights and to improving the justice system, including ensuring equal access to all litigants.

17. I am a member of the American Association for Justice ("AAJ") and as part of the 2019 Women Trial Lawyer Caucus Lobby Days, I met with members of Congress and/or their staff to ask for their support in passing the Forced Arbitration Injustice Repeal "FAIR" Act (S. 610 & H.R. 1423), to prohibit forced arbitration in consumer and employment contracts.

18. I am also a member of the Federal Bar Association.

19. I am regularly invited to participate in bench-bar conferences and programs developed by the Duke Law Center for Judicial Studies, and I have participated in updating and drafting Duke's Guidelines and Best Practices to increase women and diversity in MDL leadership positions.

20. My experience and successful track record in litigating and resolving class actions, my passion for consumer rights, my personal commitment to improving the justice system, and diverse background support Gibbs Law Group's and my appointment as Interim Co-Lead Counsel in this matter.

21. Gibbs Law Group has handled dozens of consumer class actions and has recovered hundreds of millions of dollars for class members. Gibbs Law Group lawyers have earned a national reputation for their innovative strategies and relentless efforts to advance consumer rights through class litigation. Recently, the firm was named a Law360 Class Action Group of the Year and Daily Journal Top Boutique Law Firm in California; its attorneys won three California Lawyer Attorney of the Year (CLAY) Awards; and its founding partner, Eric H. Gibbs, was recognized as a Law360 Titan of the Plaintiffs Bar and one of Lawdragon's 500 Leading Plaintiff Consumer Lawyers. Gibbs Law Group's attorneys have also drawn praise from courts across the country:

- "Throughout this litigation, Class Counsel has consistently demonstrated superb candor, diligence, organization, and aptitude." *In Re: Vizio, Inc. Consumer Privacy Litigation*, No. 8:16-ml-02963 (C.D. Cal. July 31, 2019) (Staton, J.), ECF No. 337 at 14;
- "[T]his is an extraordinarily complex case and an extraordinarily creative solution. ... I wanna thank you and compliment you . . . It's been a real pleasure to work with you." *Glenn v. Hyundai Motor Am.*, 8:15-cv-2052, ECF No. 275 at 14-15 (C.D. Cal., Feb. 25, 2019) (Carter, J.);
- "You made it very easy to deal with this case and clearly your years of expertise have carried the day here. Nice work. Thank you." *In re American Honda Motor Co., Inc., CR-V Vibration Litig.*, No. 2:15-md-2661, ECF No. 108 at 27 (S.D. Ohio Dec. 7, 2018) (Watson, J.); and
- "This [\$51.15 million] settlement could not have been achieved without the skill and experience that Class Counsel applied in the face of legal hurdles at every turn." *Beaver*

v. Tarsadia Hotels, 11-cv-1842–GPC, ECF No. 314 at 23 (S.D. Cal. Sept. 28, 2017) (Curiel, J.).

32. Both Gibbs Law Group and Cohen Milstein Sellers & Toll PLLC have performed significant work on this case over the last four months. Among other things, we have commissioned laboratory testing to confirm that the baby food products at issue still contain unsafe levels of toxic heavy metals and we have consulted with a number experts, including experts regarding the impact of toxic heavy metals on child development. We have also communicated with nearly 1,000 witnesses and proposed class members. Further, we have conducted significant legal research of federal regulations and case decisions to determine which theories of liability were appropriate and which causes of action were the most viable, which damages theories to assert, and whether this case could be feasibly brought as a class action, among other things. This extensive research and investigation allowed us to draft a detailed complaint in *Albano* and will serve us well if appointed as Interim Co-Lead Counsel.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true to the best of my knowledge. Executed on May 27, 2021, in San Francisco, California.

/s/ Rosemary M. Rivas
Rosemary M. Rivas